IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4468 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHOOMI JITENDRA RAJGOR

Versus

GUJARAT UNIVERSITY

Appearance:

1. Special Civil Application No. 4468 of 2004

MR GM JOSHI for Petitioner No. 1

MR SI NANAVATI WITH MRS VD NANAVATI for Respondent No. 1

..... for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 15/04/2004

ORAL JUDGEMENT

1. Rule. Mr.S.I.Nanavati, learned Senior Counsel with Mrs.V.D.Nanavati waives service of rule on behalf of

respondents.

2. Ms.Bhoomi Jitendra Rajgor, petitioner has filed this petition with a prayer that this Court may issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction quashing and setting aside the decision of the respondents in withholding the form of the petitioner in respect of the Third Year B.A.Examination to be commenced from 24.4.2004 and further declaring the respondents that there is no deficiency in the performance of the petitioner.

3. The facts giving rise to this petition are as under:

3.1 The petitioner is a student of Third Year Bachelor of Arts Course at St.Xavier's College respondent No.2 at Ahmedabad. The petitioner has a good academic career. She was very regular in pursuing the studies at the College but unfortunately since last two years, she is suffering from severe Bronchitis and physically weak and her resistance is less. She was not keeping good health for the last two years because of the severity of the disease, she could not attend the classes regularly.

3.2 It is a case of the petitioner that as she was suffering from severe Bronchitis, she was under constant medication for intensive treatment of the ailment. The petitioner further states that even thereafter as she was on a heavy medication. The medicines enabled her to attend to the studies but the sedation and drowsiness many a times disabled her to attend to all the lectures at the college. She was required to take rest between the lectures from many days. However, she was trying to attend to as many classes as she could. But the severity of the disease coupled with medication resulting in weakness which prevented her from being absolutely regular in her studies. As a result thereof, her attendance was not very regular in her studies.

3.3 It may be noted that inspite of the aforesaid ailment, the petitioner had secured 70% marks in the first test & she fared reasonably well and secured second class inspite of continued ill health. In the second test also petitioner has secured good marks. She has also appeared in the preliminary test held by the college and she has also filled in the form for appearing in the final examination commencing from 24th April, 2004.

3.4 The petitioner has also annexed the medical report of S.A.L. Hospital & Medical Institute dated 9th

November, 2002, and also produced Maitri Pathology Laboratory, and another certificate from Dr.Harjitsingh S.Dumra. The petitioner has also made representation to the Principal of College on 23rd February, 2004. The petitioner has also made representation to the Hon'ble Governor on 6th April, 2004.

4. I have heard Mr.G.M.Joshi, learned advocate for the petitioner and Mr.S.I.Nanavati, learned Senior Counsel with Mrs.V.D.Nanavati for the respondents.

5. The learned senior counsel for the respondents has relied upon Ordinance 78 which provides that the following shall be the minimum requirement for attendance necessary for keeping terms. As regards arts faculty is concerned, for first terms 75 days presence is required and for second terms also 75 days presence is required.

6. It may be noted that in view of her continuous ailment, there is a great shortfall in the presence of the petitioner.

7. The learned senior counsel for the respondents has also relied upon Ordinance 79 which provides power to Executive Committee to condone the absence in certain eventualities.

8. I have considered the peculiar facts and circumstances of the case of the petitioner and also considered the fact that the examination is to be commenced from 24th April, 2004. In view of the fact that petitioner has a very bright academic career and looking to the peculiar facts and circumstances of the case, I am of the view that this Court may direct the University and the College to permit the petitioner to appear in the examination and the decision of the respondents in withholding the form of the petitioner in respect of Third Year B.A. Examination to be commenced from 24th April, 2004, is set aside as the same is not correct in view of the peculiar facts and circumstances of the case.

9. In view of the aforesaid observations and directions, this petition is allowed with no order as to costs. Rule is made absolute with no order as to costs. It may be noted that this order may not to be treated as a precedent in future case.

(K.M. Mehta, J.)

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